

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

FRANCIS MITCHELL,

Petitioner,

v.

THE ATTORNEY GENERAL OF THE
STATE OF NEW JERSEY, et al.,

Respondents.

Civil Action No. 17-12069-BRM

MEMORANDUM ORDER

THIS MATTER is opened to the Court upon the filing of a petition for a writ of habeas corpus (ECF No. 1) by Petitioner Francis Mitchell (“Petitioner”), a convicted state prisoner confined in East Jersey State Prison in Rahway, New Jersey, brought pursuant to 28 U.S.C. § 2254. For the reasons set forth below, Plaintiff’s habeas petition shall be **ADMINISTRATIVELY TERMINATED** as Petitioner has neither paid the appropriate filing fee nor filed a complete application to proceed *in forma pauperis* sufficient to enable him to proceed without prepayment of that fee.

Pursuant to Local Civil Rule 54.3(a), a Petitioner may not proceed in this Court until he has paid the appropriate filing fee, which, for a petition for a writ of habeas corpus, is \$5.00. Petitioner has not paid the \$5.00 filing fee required for this matter. (*See* ECF Docket Report.) As Petitioner has failed to either pay the filing fee or file a complete application to proceed *in forma pauperis* pursuant to Local Civil Rule 81.2(b), his petition must be administratively terminated until such time as he either pays the \$5.00 fee or submits a complete application to proceed *in forma pauperis* in accordance with Rule 81.2(b). Accordingly,

IT IS on this 30th day of November 2017,

ORDERED that the Clerk of the Court shall administratively terminate this case, without filing the complaint or assessing a filing fee; Petitioner is informed that administrative termination is not a “dismissal” for purposes of the statute of limitations, and that if the case is reopened, it is not subject to the statute of limitations time bar if it was originally filed timely, *see Jenkins v. Superintendent of Laurel Highlands*, 705 F.3d 80, 84 n.2 (2013) (describing prisoner mailbox rule generally); *Dasilva v. Sheriff’s Dept.*, 413 F. App’x 498, 502 (3rd Cir. 2011) (“[The] statute of limitations is met when a complaint is submitted to the clerk before the statute runs”); and it is further

ORDERED that the Clerk of the Court shall forward Petitioner a blank form Application to Proceed *In Forma Pauperis* in a Habeas Corpus Case, for use by a prisoner; and it is further

ORDERED that if Petitioner wishes to reopen this case, he shall so notify the Court, in writing addressed to the Clerk of the Court, Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street, Trenton, NJ 08608, within 30 days of the date of entry of this Order; Plaintiff’s writing shall include either a complete *in forma pauperis* application or the \$5.00 filing fee; and it is further

ORDERED that upon receipt of a writing from Petitioner stating that he wishes to reopen this case, accompanied by either a complete *in forma pauperis* application or the filing fee, the Clerk of the Court will be directed to reopen this case; and it is finally

ORDERED that the Clerk of the Court shall serve a copy of this Order upon Petitioner by regular U.S. mail.

/s/Brian R. Martinotti
HON. BRIAN R. MARTINOTTI
UNITED STATES DISTRICT JUDGE